

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

UNITED STATES OF AMERICA)	
ex rel. WILLIAM C. HYSER)	
)	
Plaintiffs/Relator)	
)	Civil Action 3:11-CV-185
)	JORDAN/SHIRLEY
v.)	
)	
EOD TECHNOLOGY, INC., AND)	
DOES 1 THROUGH 75, INCLUSIVE)	
)	
Defendants.)	
)	

**RESPONSE OF THE UNITED STATES OF AMERICA
TO ORDER TO SHOW CAUSE**

The United States of America, by and through Nancy Stallard Harr, Acting United States Attorney for the Eastern District of Tennessee, hereby submits this response to the Court's Order [Dkt. No. 39] directing plaintiff to show cause why this action should not be dismissed for failure to prosecute.

On October 29, 2015, the United States filed its Notice of Election [Dkt. No. 37] declining to intervene in this action. Accordingly, in the event that Relator may seek to voluntarily dismiss this action or the Court determines that it is appropriate to dismiss this action for failure to prosecute, the United States, pursuant to 31 U.S.C. § 3730(b)(1), hereby notifies the

Court that the United States consents to dismissal, provided that such dismissal is without prejudice as to the United States.¹

Respectfully submitted,

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Acting United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2016, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electric filing system

s/Robert C. McConkey III
Robert C. McConkey, III
Assistant U.S. Attorney

¹ Courts that have considered the question have consistently held that when a declined *qui tam* complaint is dismissed based on reasons not related to the merits, dismissal should be without prejudice to the rights of the government. *See United States ex rel. Williams v. Bell Helicopter Textron, Inc.*, 417 F.3d 450, 455-56 (5th Cir. 2005); *United States ex rel. Rostholder v. Omnicare*, Civil No. CCB-07-1283, 2010 WL 3399789, *15 (D. Md. Aug. 14, 2012); *United States ex rel. Fair Lab. Practices Assoc. v. Quest Diagnostics Inc.*, No. 05 Civ. 5393 (RPP), 2011 U.S. Dist. LEXIS 37014, *4 n.3 (S.D. N.Y. Mar. 24, 2011); *United States ex rel. Olsen v. Lockheed Martin Corp.*, No. 1:09-CV-3083-JEC, 2010 U.S. Dist. LEXIS 145114, *17 (N.D. Ga. Sept. 16, 2010); *United States ex rel. Davis v. Lockheed Martin Corp.*, Action No. 4:09-CV-645-Y, 2010 WL 3239228, *7 (N.D. Tex. Aug. 16, 2010).